

APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER

Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

SECRETARY OF STATE

The undersigned intends to circulate and file an INITIATIVE or a REFERENDUM (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the MEASURE or CONSTITUTIONAL AMENDMENT (circle appropriate word) intended to be INITIATED or REFERRED (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated. Criminal Penalties Act

This Amendment to the Constitution will mandate a Criminal Sentencing Scheme that is commensurate with the magnitude of the crime and age of person. It will eliminate mandatory minimum sentences and return sentencing discretion to the trial judge. A criminal sentence will be based only on the actual conduct of the person and not on a prior crime or conduct of another person. It will mandate certain procedural safeguards to prevent a double sentence or wrongful conviction.

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Date of Application	<u>December 3, 2012</u>
Signatures Required	<u>259,213</u>
Deadline for Filing	<u>July 3, 2014</u>
Serial Number Issued	<u>C-02-2014</u>
FOR OFFICE USE ONLY	

OFFICIAL TITLE
AN INITIATIVE MEASURE

ADDING ARTICLE XXXI, CONSTITUTION OF ARIZONA, RELATING TO
CRIMINAL PENALTIES.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the people of the state of Arizona:

Part 1. Title.

This act may be cited as the "Criminal Penalties Act."

Part 2. Purpose.

The People of Arizona find and declare the following:

The citizens of Arizona require a fair, consistent, uniform, streamlined and financially efficient criminal sentencing scheme whereby sentences are commensurate with the magnitude of the crime, and free of political bias and influence. Additionally, once a criminal sentence has been served, it shall not serve or be used as a basis or justification for an enhancement of any future sentence or punishment by any government entity.

Part 3. Article XXXI, Constitution of Arizona, is added with the following:

SECTION 1. A CRIMINAL SENTENCE AND PENALTY SHALL BE FAIR, CONSISTENT, AND BASED SOLELY UPON FACTS FOUND TO BE TRUE BEYOND A REASONABLE DOUBT IN THE SAME CRIMINAL PROCEEDING. ANY PRIOR OR CONTEMPORANEOUS CRIMINAL CONDUCT OR SENTENCE THAT IS OUTSIDE OF THE SAME CRIMINAL PROCEEDING SHALL NOT BE A CONSIDERATION OR BASIS TO ENHANCE A SENTENCE OR PENALTY. CONVERSELY, BEHAVIOR OR ACTIONS SUBSEQUENT TO THE CRIMINAL BEHAVIOR SHALL NOT BE A CONSIDERATION OR BASIS TO REDUCE A SENTENCE OR PENALTY.

SECTION 2. A PERSON SHALL NOT BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY FOR CRIMINAL CONDUCT THAT RESULTED IN NO HARM OR ATTEMPTED HARM TO ANOTHER PERSON, ANOTHER PERSON'S PROPERTY, OR ANY ANIMAL. A PERSON SHALL NOT BE SUBJECT TO A ~~CRIMINAL SENTENCE OR PENALTY~~ CRIMINAL SENTENCE OR PENALTY FOR THE CRIMINAL CONDUCT, OR THE RESULT OF THE CRIMINAL CONDUCT, OF ANOTHER PERSON. A PERSON SHALL NOT BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY FOR A DISCUSSION OR AGREEMENT WITH ANOTHER PERSON TO COMMIT A CRIMINAL ACT. A PERSON SHALL NOT BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY FOR A CONVICTION WITHOUT EVIDENCE BEYOND A SOLE EYE-WITNESS. A

PERSON SHALL NOT BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY FOR CRIMINAL CONDUCT THAT PRECIPITATED FROM ANY ACTIVE CONDUCT OF LAW ENFORCEMENT TO ENTICE, ENCOURAGE, OR FACILITATE THE CRIMINAL CONDUCT. 2012 DEC -3 PM 12:33

SECTION 3. A PERSON SHALL NOT BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY FOR CRIMINAL CONDUCT IF THE PERSON DID NOT KNOW AND SHOULD NOT HAVE KNOWN THAT THE CONDUCT WAS CRIMINAL IN NATURE. A PERSON SHALL NOT BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY IF THE PERSON HAS RECEIVED AND SERVED A PRIOR SENTENCE OR PENALTY IN ANOTHER JURISDICTION OUTSIDE OF THIS STATE FOR THE SAME CRIMINAL CONDUCT. IF THE PERSON COULD HAVE RECEIVED A SENTENCE OR PENALTY IN ANOTHER JURISDICTION OUTSIDE OF THIS STATE FOR THE SAME CRIMINAL CONDUCT, THE CONSENT OF THE OTHER JURISDICTION IS REQUIRED BEFORE A PERSON SHALL BE SUBJECT TO A CRIMINAL SENTENCE OR PENALTY IN THIS STATE FOR THE SAME CONDUCT.

SECTION 4. THE MINIMUM SENTENCE OR PENALTY FOR A CRIMINAL CONVICTION SHALL BE AT THE DISCRETION OF THE SENTENCING JUDGE WITHOUT REGARD TO ANY SENTENCING AGREEMENT BETWEEN THE CONVICTED PERSON AND THE PROSECUTION, AND WITHOUT REGARD TO ANY SENTENCING GUIDELINE IN RULE, STATUTE OR ADVISORY. THE SENTENCING JUDGE MAY EXERCISE DISCRETION TO IMPOSE NO SENTENCE OR PENALTY FOR A CRIMINAL CONVICTION.

SECTION 5. A PERSON'S SENTENCE OF INCARCERATION SHALL BE SERVED IN ITS ENTIRETY IN CONFINED INCARCERATION, WORK RELEASE, OR HOME DETENTION. A SENTENCE OF INCARCERATION SHALL NOT BE REDUCED WITH PAROLE OR COMMUNITY SUPERVISION. A PERSON'S SENTENCE MAY INCLUDE A PERIOD OF SUPERVISED PROBATION ONLY IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE PERSON HAS A PROPENSITY FOR FUTURE CRIMINAL CONDUCT. A PERSON'S SENTENCE SHALL NOT INCLUDE ANY PERIOD OF TIME OF UNSUPERVISED PROBATION.

SECTIONS 6. ALL SENTENCES OF INCARCERATION SHALL BE EXPRESSED IN A SPECIFIC NUMBER OF DAYS THAT SHALL NOT BE SUBJECT TO ALTERATION BY THE RULES, REGULATIONS OR POLICIES OF THE INSTITUTION OF INCARCERATION. THE DIRECTOR OF THE ARIZONA DEPARTMENT OF CORRECTIONS, THE COUNTY SHERIFF, OR THE CITY POLICE CHIEF RETAINING CUSTODY OF ANY PRISONER IN THE RESPECTIVE INSTITUTION OF INCARCERATION MAY FORMULATE NON-DISCRETIONARY AND UNBIASED POLICIES ALLOWING SERVICE OF ANY SENTENCE IN AN ESTABLISHED PROGRAM OF WORK RELEASE OR HOME DETENTION WITH GPS MONITORING.

SECTION 7. CRIMES SHALL BE CLASSIFIED AS FOLLOWS:

- A. MISDEMEANORS, CLASSES 1, 2, AND 3.
- B. NON-VIOLENT FELONIES, CLASSES 6, 7, 8, 9, AND 10.
- C. VIOLENT OR SEXUAL FELONIES, AND ATTEMPTED VIOLENT OR SEXUAL FELONIES, CLASSES 1, 2, 3, 4, AND 5.
- D. THE ULTIMATE MAXIMUM SENTENCE OF INCARCERATION FOR EACH CLASS OF CRIME IS AS FOLLOWS:

MISDEMEANOR, CLASS 3 – 30 DAYS
MISDEMEANOR, CLASS 2 – 90 DAYS
MISDEMEANOR, CLASS 1 – 120 DAYS
FELONY, CLASS 10 – 365 DAYS
FELONY, CLASS 9 – 730 DAYS
FELONY, CLASS 8 – 1,095 DAYS
FELONY, CLASS 7 – 1,460 DAYS
FELONY, CLASS 6 – 1,825 DAYS
FELONY, CLASS 5 – 3,650 DAYS
FELONY, CLASS 4 – 5,475 DAYS
FELONY, CLASS 3 – 7,300 DAYS
FELONY, CLASS 2 – NATURAL LIFETIME
FELONY, CLASS 1 – DEATH

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- E. IF A CONVICTION IS BASED ON THE ATTEMPT OF A CRIME WITHOUT ITS COMPLETION, THE ULTIMATE MAXIMUM SENTENCE FOR THE CONVICTION SHALL BE REDUCED BY TWENTY-FIVE PERCENT, EXCEPT FOR FELONIES, CLASS 1 AND 2.
- F. IF A CONVICTION IS FOR A PERSON UNDER THE AGE OF NINETEEN, THE ULTIMATE MAXIMUM SENTENCE SHALL BE AS FOLLOWS:

FOR AGES 10 TO 14 AT THE TIME OF COMMISSION OF THE OFFENSE, TWENTY-FIVE PERCENT OF THE ADULT MAXIMUM SENTENCE, EXCLUDING FELONIES, CLASS 1 AND 2.

FOR AGES 15-16 AT THE TIME OF COMMISSION OF THE OFFENSE, FIFTY PERCENT OF THE ADULT MAXIMUM SENTENCE, EXCLUDING FELONIES, CLASS 1 AND 2.

FOR AGES 17-18 AT THE TIME OF COMMISSION OF THE OFFENSE, SEVENTY-FIVE PERCENT OF THE ADULT MAXIMUM SENTENCE, EXCLUDING FELONIES, CLASS 1 AND 2.

- G. IF THE VICTIM OF THE CRIME, OR THE VICTIM'S LEGAL REPRESENTATIVE, AGREES TO A LOWER MAXIMUM SENTENCE, THE ULTIMATE MAXIMUM SENTENCE SHALL BE THAT AGREED UPON.

SECTION 8. SENTENCES IMPOSED FOR CONVICTIONS THAT WERE CHARGED IN THE SAME INDICTMENT, INFORMATION, COMPLAINT, OR TRIAL SHALL BE CONCURRENT WITH ONE ANOTHER.

SECTION 9. PLEA AGREEMENTS.

- A. THE PROSECUTION MAY NOT DISMISS ANY CRIMINAL CHARGE PURSUANT TO A PLEA AGREEMENT WITH THE ACCUSED IF CLEAR AND CONVINCING EVIDENCE SUPPORTS THE ACCUSED'S COMMISSION OF THE CRIMINAL CHARGE. THE TRIAL JUDGE SHALL DETERMINE THE EXISTENCE OF CLEAR AND CONVINCING EVIDENCE AND DISMISSAL OF THE CRIMINAL CHARGE.
- B. THE PROSECUTION MAY NOT REDUCE OR ALTER THE FELONY CLASS OR CLASSIFICATION FOR A CRIME TO NON-VIOLENT OR NON-SEXUAL IF INCONSISTENT WITH THE UNDERLYING FACTS.
- C. CONSIDERATION FOR A PLEA AGREEMENT SHALL NOT INCLUDE THE ACCUSED'S TESTIMONY OR INCULPATORY INFORMATION AGAINST ANOTHER PERSON.
- D. THE TRIAL JUDGE SHALL NOT REJECT A PLEA AGREEMENT BASED UPON THE MAXIMUM SENTENCE WITHIN THE AGREEMENT. HOWEVER, THE TRIAL JUDGE SHALL REJECT ANY PLEA AGREEMENT INCONSISTENT WITH THIS SECTION.
- E. ALL PLEA AGREEMENTS MUST STATE THE MAXIMUM SENTENCE AGREED UPON, THE SPECIFIC AMOUNT OF RESTITUTION AGREED UPON, IF ANY, AND THE SPECIFIC AMOUNT OF ANY FINE AGREED UPON. THE SENTENCING JUDGE MAY SET ANY SENTENCE UP TO THE MAXIMUM SENTENCE SPECIFIED IN THE AGREEMENT, BUT SHALL ORDER RESTITUTION AND SET THE FINE IN THE SAME AMOUNTS SPECIFIED IN THE AGREEMENT.

SECTION 10. RESTITUTION AND FINES TO CRIMINAL VICTIMS SHALL BE DETERMINED BY THE TRIAL JUDGE IN ABSENCE OF A PLEA AGREEMENT.

SECTION 11. A FULL PARDON OR COMMUTATION OF SENTENCE MAY BE GRANTED BY THE PRESIDENT OF THE UNITED STATES, THE GOVERNOR OF ARIZONA, UPON THE CONCURRENCE OF ANY TEN STATE LEGISLATORS, OR UPON THE FILING OF 100,000 SIGNATURES (ACTUAL OR ELECTRONIC) OF ARIZONA CITIZENS WITH THE ARIZONA SUPREME COURT. NO LAW, RULE OR REGULATION SHALL DELAY, RESTRICT, OR INTERFERE WITH THE PARDON OR COMMUTATION OF SENTENCE.

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THE ONLY CONSIDERATION FOR CRIMINAL CLASS PLACEMENT SHALL BE THE SEVERITY AND HARM OF THE OFFENSE.

- B. FOR ALL NEW CRIMINAL OFFENSES, THE CRIMINAL CLASS PLACEMENT SHALL BE MADE THIRTY DAYS PRIOR TO THE ENACTING LAW'S EFFECTIVE DATE.
- C. FOR ALL EXISTING CRIMINAL OFFENSES, THE CRIMINAL CLASS PLACEMENT SHALL BE MADE PRIOR TO JANUARY 1, 2015.

SECTION 18. ALL RECORD OF, AND REFERENCES TO, A CRIMINAL CONVICTION AND SENTENCE SHALL BE ERASED AND TERMINATED, AND ALL CIVIL RIGHTS AND PRIVILEGES OF A CONVICTED PERSON SHALL BE AUTOMATICALLY RESTORED AS FOLLOWS:

- A. FOR CLASS 1, 2, AND 3 MISDEMEANORS, UPON COMPLETION OF ANY SENTENCE, AND PAYMENT OF RESTITUTION, FINES AND FEES.
- B. FOR CLASS 6, 7, 8, 9, AND 10 FELONIES, ONE YEAR FROM COMPLETION OF ANY SENTENCE, AND PAYMENT OF RESTITUTION, FINES AND FEES.
- C. FOR CLASS 3, 4, AND 5 FELONIES, TEN YEARS FROM COMPLETION OF ANY SENTENCE, AND PAYMENT OF RESTITUTION, FINES AND FEES, PROVIDED THAT THE PERSON HAS NOT SUSTAINED A SUBSEQUENT FELONY CONVICTION DURING THE TEN-YEAR PERIOD, IN WHICH CASE THE TEN-YEAR WAITING PERIOD BEGINS ANEW FROM THE COMPLETION OF THE SENTENCE FOR THE SUBSEQUENT CONVICTION.

SECTION 19. THE PROVISIONS OF THIS ARTICLE SHALL BE EFFECTIVE AND ENFORCEABLE NOTWITHSTANDING ANY OTHER PROVISION IN THE CONSTITUTION OF ARIZONA.

Part 4. Severability.

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Part 5. Effective date.

This Constitutional Amendment shall become effective on January 1, 2015, and shall be applied retroactively to all pending criminal proceedings and prior convictions upon application of the accused or convicted person. Upon application of a convicted person, the person shall be re-sentenced or restored, if the sentence has been fully served, under this Amendment within sixty days.

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SECTION 12. IF THE ACCUSED IS CONVICTED IN A JURY TRIAL, THE JURY SHALL SET THE MAXIMUM SENTENCE TO BE IMPOSED.

- A. SUBSEQUENT TO THE JURY CONVICTION, THE JURY SHALL BE INSTRUCTED IN OPEN COURT THAT IT SHALL NOT CONFER WITH OTHER JURORS, AND EACH JUROR, INDIVIDUALLY, SHALL PROVIDE, ON A WRITTEN FORM, A MAXIMUM SENTENCE FOR THE CONVICTED PERSON WITHIN THE RANGE OF ZERO DAYS UP TO THE ULTIMATE MAXIMUM SENTENCES ALLOWED UNDER SECTION 7D. THE TRIAL JUDGE SHALL INSTRUCT THE JURY THAT ITS MAXIMUM SENTENCE SHALL BE BASED ON THE EVIDENCE PRESENTED IN THE CRIMINAL PROCEEDING AND ANY PERSONAL EXPERIENCES, KNOWLEDGE OR BELIEFS.
- B. THE MAXIMUM SENTENCES PROVIDED BY THE INDIVIDUAL JURORS SHALL BE AVERAGED TOGETHER TO ARRIVE AT A SINGLE MAXIMUM SENTENCE SET BY THE JURY.

SECTION 13. IF THE ACCUSED IS CONVICTED WITHOUT A JURY AND IN THE ABSENCE OF A PLEA AGREEMENT, THE PROSECUTION, PURSUANT TO ANY MAXIMUM SENTENCING AGREEMENT WITH THE ACCUSED, SHALL SET THE MAXIMUM SENTENCE FOR THE CONVICTED PERSON AT LESS THAN THE ULTIMATE MAXIMUM SENTENCES ALLOWED UNDER SECTION 7D.

SECTION 14. A SENTENCE OR CONVICTION MAY NOT BE DEFERRED OR SET ASIDE SUBJECT TO COMPLETION, ATTENDANCE OR PARTICIPATION IN A CRIME DIVERSION PROGRAM. AN ACCUSED SHALL NOT BE SUBJECT TO COMPLETION, ATTENDANCE OR PARTICIPATION IN A CRIME DIVERSION PROGRAM WITHOUT A CONVICTION.

SECTION 15. EMBARRASSMENT OF THE CONVICTED PERSON SHALL NOT BE A BASIS FOR ANY IMPOSED SENTENCE.

SECTION 16. THE SENTENCING JUDGE SHALL NOT CONSIDER, FOR SENTENCING PURPOSES, THAT THE CONVICTED PERSON FAILED TO ADMIT GUILT OR PROVIDED TESTIMONY OR INCULPATORY INFORMATION AGAINST ANOTHER PERSON.

SECTION 17. THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS SHALL HAVE SOLE AUTHORITY TO DETERMINE CONDUCT THAT CONSTITUTES A CRIMINAL OFFENSE. THE JUDICIAL DEPARTMENT SHALL HAVE SOLE AUTHORITY TO SET THE ULTIMATE MAXIMUM SENTENCE FOR EACH OFFENSE.

- A. THE SUPREME COURT SHALL DETERMINE THE CRIMINAL CLASS PLACEMENT UNDER SECTION 7D FOR EACH CRIMINAL OFFENSE.